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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/604,001	06/26/2000	Peter Hossel	50105	2632

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KEIL & WEINKAUF
1350 CONNECTICUT AVENUE, N.W.
WASHINGTON, DC 20036

EXAMINER

FUBARA, BLESSING M

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 04/26/2002

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/604,001

Applicant(s)

HOSSEL ET AL.

Examiner

Blessing M. Fubara

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|-----------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Examiner acknowledges receipt of paper number 9 filed 01/28/02.

Claim Rejections - 35 USC § 102

1. The rejection of claims 1 and 3-10 under 35 U.S.C. 102(e) as being anticipated by Tropsch et al. (US 5,869,032) is withdrawn because Tropsch does not teach the presence of a monomer that has at least two ethylenically unsaturated non-conjugated double in the polymeric preparation.
2. Claims 1-5 and 11 remain rejected under 35 U.S.C. 102(b) as being anticipated by Uhl et al. (US 5,219,969). **New claim 14** is included in this rejection

Applicants traversed this rejection on the grounds that Uhl requires the mandatory presence of acrylic acid and/or methacrylic acid in an amount of 50 to 99 parts by weight. Applicants further argue that the amended claim 1 in the application recites 0 to 40% by weight of unsaturated acids or anhydrides.

3. Applicant's arguments filed 01/28/02 have been fully considered but they are not persuasive. Amended claim 1, part c recites the absence or presence of unsaturated acid or unsaturated anhydride, and as admitted by applicants Uhl teaches the presence of acrylic acid and/or methacrylic acid in an amount of 50 to 99 parts by weight. Thus Uhl anticipates the claims and the rejection is maintained.

4. Claims 1-13 and new claim 14 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Tropsch et al. (US 5,869,032) and Uhl et al. (US 5,219,969).

Applicants argue that Uhl is incompatible with the invention and that the cosmetic or dermatological preparations of the application are not intended to adhere to the treated surface

Art Unit: 1615

without being able to be washed out. Applicants agree that a person skilled in the art would not have been led to a cosmetic or dermatological composition and that Tropsch does not employ the crosslinking monomers of the application.

5. Applicant's arguments filed 01/28/02 have been fully considered but they are not persuasive. The claiming of a new use, new function or unknown property, which is inherently present in the prior art, does not necessarily make the claim patentable. In re Best, 562 F.2d 1252, 1254, 195 USPQ 430, 433 (CCPA 1977). The comparative data of pages 26-27 of the specification does not refer to the composition of Uhl. The compositions of Uhl and Tropsch both contain monomers that are capable of acting as crosslinkers. The motivation to combine stems from the teachings of the prior art references. Both references teach polymeric preparations that comprise monomers that are capable of acting as crosslinkers. The utility in Tropsch is directed to cosmetics and the utility in Uhl is directed to thickeners for textile. Future intended use is not critical in a composition claim. Since the preparation of Uhl contains divinylethyleneurea, N-vinylimidazole and 2, 2'-azobis (2-amidinopropane) dihydrochloride, and the polymerization of the monomers takes place by free radical process; and since preparation of Tropsch comprises 1-vinylimidazole, quaternized 1-vinylimidazole, N-vinylcaprolactam, N-vinylpyrrolidone, 3-methyl-1-vinylimidazolium methylsulfate, 2,2'-azobis(2-amidinopropane) dihydrochloride and polymerization of the preparation takes place by free radical polymerization; and since both preparations are made by free radical polymerization, one of skill in the art would be led to use the crosslinking monomer of Uhl in the preparation of Tropsch.

Art Unit: 1615

Double Patenting

6. Claim 1-13 remain rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 5,869,032 (Tropsch et al.) in view of Uhl et al. (US 5,219,969).

Applicants failed to address this rejection and the rejection is given below.

7. Both Tropsch and Uhl disclose free radical polymerization of monomers wherein the polymeric preparation is used in cosmetic formulation. Uhl teaches a water-in-oil and oil-in-water-emulsions. Thus, combining the teachings of both prior art references would enable one of ordinary skill in the art to formulate water-in-oil or oil-in-water cosmetic product comprising the copolymeric composition of Tropsch. It would have been obvious to one of ordinary skill in the art, having the common knowledge that emulsions are utilized in cosmetic compositions, to formulate the composition of Tropsch as a water-in-oil or oil-in-water emulsion in the manner taught by Uhl. Since the preparation of Uhl contains divinylethyleneurea, N-vinylimidazole and 2, 2'-azobis (2-amidinopropane) dihydrochloride, and the polymerization of the monomers takes place by free radical process; and since preparation of Tropsch comprises 1-vinylimidazole, quaternized 1-vinylimidazole, N-vinylcaprolactam, N-vinylpyrrolidone, 3-methyl-1-vinylimidazolium methylsulfate, 2,2'-azobis(2-amidinopropane) dihydrochloride and polymerization of the preparation takes place by free radical polymerization; and since both preparations are made by free radical polymerization, one of skill in the art would be led to use the crosslinking monomer of Uhl in the preparation of Tropsch.

Suggestion: It is still suggested that abbreviations W/O and O/W in claims 10 and 11 be replaced with water-in-oil or oil-in-water.

Art Unit: 1615

No claim is allowed.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blessing M. Fubara whose telephone number is 703-308-8374. The examiner can normally be reached on 7 a.m. to 3:30 p.m. (Monday to Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on 703-308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3592 for regular communications and 703-305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Blessing Fubara

April 22, 2002


THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600